

THE HONORABLE MARSHA J. PECHMAN

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ATTORNEYS FOR PLAINTIFF EEOC

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff

v.

BNSF RAILWAY CO.,

Defendant.

CIVIL ACTION NO. 2:14-cv-01488-MJP

FIRST AMENDED COMPLAINT

JURY TRIAL DEMAND

JURISDICTION AND VENUE

2. The employment practices alleged to be unlawful were committed within the jurisdiction of the United States District Court for the Western District of Washington.

3. Plaintiff, the Equal Employment Opportunity Commission (the "Commission"), is the agency of the United States of America charged with the administration, interpretation and enforcement of Title I of the ADA and is expressly authorized to bring this action by Section 107(a) of the ADA, 42 U.S.C. § 12117(a), which incorporates by reference Sections 706(f)(1) and (3) of Title VII, 42 U.S.C. 2000e-5(f)(1).

1 because of his back injury. Mr. Holt received follow up treatment for his permanent physical
2 impairment in 2009, but did not miss any work from his law enforcement job in 2009. In fact,
3 Mr. Holt qualified for a more physically arduous SWAT/emergency response team with his
4 employer from 2009 to 2011.

5 10. Mr. Holt applied for a Patrol Officer position with BNSF in Seattle, Washington
6 in June 2011, was interviewed by BNSF's Security Chief in September 2011, and received a
7 conditional offer. Mr. Holt disclosed his permanent musculoskeletal back injury to BNSF after
8 receiving the conditional offer for the subject position. Shortly thereafter, BNSF required Mr.
9 Holt to undergo and pass a number of tests, including a drug test, a background investigation, a
10 psychological evaluation, an isokinetic physical strength test, and a pulmonary function test. Mr.
11 Holt passed each of the foregoing tests. Mr. Holt also provided BNSF with a letter from his
12 treating doctor that indicted he had treated Mr. Holt for back pain, but that his back pain has
13 resolved. After examining him in person and despite knowing about his prior back injury, a
14 BNSF contract doctor medically approved Mr. Holt to start in the senior patrol officer position in
15 October 2011.

16 11. Even though BNSF's contract doctor had approved Mr. Holt to start in the Patrol
17 Officer position, BNSF's medical unit in Texas requested more information from him in
18 November 2011, including an MRI. Mr. Holt informed BNSF in November 2011 that his back
19 had been asymptomatic since 2009, his own treating doctor would not approve a new MRI
20 because it was medically unnecessary, and that he would therefore have to bear the cost of this
21 MRI himself. BNSF's medical unit refused to waive the requirement that he provide an MRI at
22 his own cost, and indicated that there was still no guarantee that he would be approved to start in
23 the subject position even if he provided an MRI at his own cost, and that he would have to
24 submit the MRI in a short period of time or their offer would be rescinded. BNSF then rescinded
25 its conditional offer to Mr. Holt on December 14, 2011. Defendant made the decision not to hire

1 Mr. Holt on the basis of his disability without showing that the criteria it used to deny him
2 employment was related to the subject position and consistent with job necessity.

3 12. In addition, Defendant regarded Mr. Holt as having a disability in that Defendant
4 failed to hire him because of his permanent musculoskeletal impairment, a bulging lumbar disc
5 with at least one extrusion. BNSF believed that Mr. Holt had a heightened risk of injury in the
6 subject position as of 2011 because of his bulging lumbar disc and disc extrusion, subjected him
7 to an additional medical examination because of that belief, and then denied him employment as
8 a result.

9 13. Defendant did not require all entering employees to provide an MRI at the
10 entering employee's cost even though it required Mr. Holt do so. For example, BNSF hired an
11 individual for the senior patrol officer position in Seattle, Washington in or about January 2012
12 after it withdrew the conditional offer to Mr. Holt. The individual who Defendant hired as a
13 senior patrol officer in Seattle, Washington in January 2012 did not disclose any prior back
14 injury and BNSF did not require him to provide an MRI at his cost in order to start in the senior
15 patrol officer position.

16 14. The effect of the practices complained of in paragraph 8-13 above has been to
17 deprive Mr. Holt of equal employment opportunities and otherwise adversely affect his status as
18 an employee.

19 15. The unlawful employment practices complained of in paragraph 8-13 above were
20 and are intentional.

21 16. The unlawful employment practices complained of in paragraphs 8 - 13 above
22 were done with malice or with reckless indifference to the federally protected rights of Russell
23 Holt.

24 PRAYER FOR RELIEF

25 Wherefore, the Commission respectfully requests that this Court:

1 A. Grant a permanent injunction enjoining Defendant, its officers, agents, successors,
2 assigns, and all persons in active concert or participation with it, from unlawfully failing to
3 provide equal employment opportunities to applicants for employment and employees with
4 disabilities and to accommodate applicants' and employees' disabilities, and any other
5 employment practice which discriminates on the basis of disability.

6 B. Order Defendant to institute and carry out policies, practices, and programs which
7 provide equal employment opportunities for qualified individuals with disabilities, and which
8 eradicate the effects of its past and present unlawful employment practices.

9 C. Order Defendant to make whole Mr. Holt by providing appropriate back pay and
10 front pay with interest, in amounts to be determined at trial, and other affirmative relief
11 necessary to eradicate the effects of its unlawful employment practices.

12 D. Order Defendant to make whole Mr. Holt by providing compensation for past and
13 future pecuniary losses resulting from the unlawful employment practices described in
14 paragraphs 8-13 above, including past and future out-of-pocket losses, in amounts to be
15 determined at trial.

16 E. Order Defendant to make whole Mr. Holt by providing compensation for past and
17 future non-pecuniary losses resulting from the unlawful practices complained of in paragraphs 8-
18 13 above, including emotional pain, suffering, inconvenience, loss of enjoyment of life, and
19 humiliation, in amounts to be determined at trial.

20 F. Order Defendant to pay Mr. Holt punitive damages for its malicious and reckless
21 conduct, as described in paragraphs 8-13 above, in amounts to be determined at trial.

22 G. Grant such further relief as the Court deems necessary and proper in the public
23 interest.

24 H. Award the Commission its costs of this action.

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JURY TRIAL DEMAND

The Commission requests a jury trial on all questions of fact raised by its complaint.

DATED this 17h day of November, 2014.

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**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
CERTIFICATE OF SERVICE**

I hereby certify that on November 17, 2014, I electronically filed the forgoing "EEOC'S FIRST AMENDED COMPLAINT" with the Clerk of the court using the CM/ECF system which will send notification of such filing to the following individuals listed below:

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Attorneys for Defendant BNSF Railway Co.

DATED this 17th day of November, 2014.

/s/ Damien A. Lee
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